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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,413	09/10/2003	Peter Kite	13317.1001cip	4621
20601	7590	06/02/2006	EXAMINER	
SPECKMAN LAW GROUP PLLC 1201 THIRD AVENUE, SUITE 330 SEATTLE, WA 98101			KANTAMNENI, SHOBHA	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/659,413	Applicant(s) KITE ET AL.	
	Examiner Shobha Kantamneni	Art Unit 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

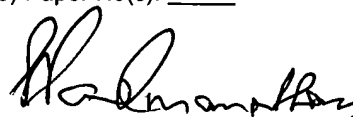
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: NONE.
 Claim(s) objected to: _____.
 Claim(s) rejected: 32, 34, 37, 39, 41, 42, 45-47 and 55-60.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See page 2.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation of 11:

Applicant's arguments with respect to the recitation "sufficient to have antimicrobial activity" have been found persuasive and the rejection of claims 57, and 59 under 35 U.S.C. 112, second paragraph, as being indefinite is herein withdrawn.

The 103(a) rejections are MAINTAINED as discussed in the final office action and those found below.

103 Rejection:

The rejection of Claims 32, 34, 39, 41, 42, 45, and 55-60 under 35 U.S.C. 103(a) as being unpatentable over Fahim (WO 00/13656) above, in view of Wilder (US 6,500,861, PTO-892) is MAINTAINED as discussed in the final office action and those found below.

Applicant argues that "One skilled in the art would not be motivated by the teaching of a sterile, pyrogen-free composition for body tissues that are normally not exposed (particularly a hypertonic dialysis fluid designed for peritoneal dialysis) to modify a handwash composition". This argument is not persuasive because Fahim teaches antimicrobial compositions comprising about 0.025 to about 8.0 % by weight EDTA or its sodium salts such as tetra sodium EDTA, and the composition has a pH from about 5.0 to about 11.0. Wilder teaches that antimicrobial compositions used for eliminating infections from various surfaces, including the surface of the body are packaged in a sterile and pyrogen free form. See '861, column 6, lines 53-55 wherein it is taught that the antimicrobial composition therein is sprayed onto skin. Thus, there is clear motivation from the teachings of Wilder to pack the antimicrobial composition of Fahim which are also used for skin care application in a sterile and pyrogen free form.

Applicant argues that "Fahim teaches a composition comprising three primary antimicrobial components, triclosan, PCMX and glutaraldehyde.....Fahim teaches that EDTA is simply added as an enhancer to these primary antimicrobial components." This argument is not persuasive because the instant claims are drawn to an antiseptic composition comprising at least one salt of EDTA in solution, and Fahim teaches such a composition. It is respectfully pointed out that the transitional phrase comprising in the instant claims does not exclude other agents in the composition.

The rejection of claims 32, 34, 37, 41, 42, 45, 55-60 under 35 U.S.C. 103(a) as being unpatentable over Kurginski (GB 1 279 148, PTO-892 of record), in view of Fahim (WO 00/13656), and Wilder (US 6,500,861 B1) is MAINTAINED as discussed in the final action.

Applicant argues that "there is no reason for one skilled in the art to package the toilet cleaning composition of Kurginski in a sterile, non-pyrogenic form even in view of the teachings of Fahim and Wilder since there is not logical basis for packaging a toilet cleaning composition in a sterile, non-pyrogenic form." This argument has been considered, but not found persuasive because the instant claims are directed to an antiseptic composition comprising at least one EDTA salt, wherein the composition has a pH of at least 9.5, and Kurginski teaches an antiseptic composition comprising at least one EDTA salt, wherein the composition has a pH from 7 to 12. Further, Fahim teaches that such EDTA compositions can be used as hand wash antimicrobial compositions, and Wilder teaches that the antimicrobial composition are packed in a sterile pyrogen free form. Thus, one of ordinary skill in the art at the time of invention would have been motivated to package the antiseptic compositions taught by Kurginski in a sterile pyrogen free form with the expectation of using for topical application such as for cleaning skin as taught by Fahim.